

Indiana Appellate Court Rules That Loss Of Use Is Insufficient To Allege Direct Physical Loss Due To COVID-19 Under Property Policy (Insurance Law Alert)

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An Indiana appellate court ruled that policy language requiring “direct physical loss” did not encompass a claim for loss of use of the insured facilities during the COVID-19 pandemic. *Indiana Repertory Theatre v. Cincinnati Cas. Co.*, 2022 WL 30123 (Ind. Ct. App. Jan. 4, 2022).

A theater sought coverage for business losses incurred in the wake of federal and local government shutdown orders. The insurer denied coverage based on the absence of direct physical loss or damage. An Indiana trial court dismissed the coverage suit and the appellate court affirmed, ruling that the policy was unambiguous and required physical alteration to the property. The court held that the theater’s assertion that a loss of use of property was sufficient to allege physical loss was unreasonable and did not comport with other policy provisions, such as the “period of restoration” clause, which contemplated repair of property that had been physically altered or damaged.

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